

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, APRIL MUÑIZ, MARCUS
MARTIN, NATALIE ROMERO, CHELSEA
ALVARADO, JOHN DOE, and THOMAS
BAKER,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

JURY TRIAL DEMANDED

**PLAINTIFFS' MOTION TO PRECLUDE ARGUMENTATIVE FILE NAMES AND TO
EXCEED FILE SIZE OF 50MB**

Plaintiffs respectfully submit this Motion seeking to preclude the use of argumentative and prejudicial descriptions in the file name for exhibits uploaded to Box.com and requesting permission to exceed the file size of 50 megabytes.

BACKGROUND

Pursuant to the Court's July 15, 2021, Scheduling Order (Dkt. No. 991), the parties exchanged exhibit lists in September 2021. Defendant Christopher Cantwell filed an exhibit list that referenced exhibits that he previously provided to Plaintiffs in January 2020. (Dkt. No. 1065). In his exhibit list as well as in the file names of the exhibits provided to Plaintiffs, Defendant Cantwell used argumentative and prejudicial descriptions in the file names. *Id.* For example, Defendant Cantwell used descriptions including "Exhibit13-GorcenskiDangerousAntifa," "Exhibit9-DontKill," "Exhibit4-CantwellDefends," and "Exhibit125-MoersTakesCamera." *Id.*

On October 13, 2021, the Court ordered the parties to submit exhibits onto Box.com no later than October 21, 2021, "to facilitate submission and consideration of evidence." (Dkt. No.

1226). The Court instructed the parties to save exhibits using a naming convention that includes a “brief description” of the file and noted that “[t]he file names given by counsel will be visible to the jury.” *Id.* The Court further instructed that the “[d]ocuments and images must not exceed file size of 50 MB.” *Id.*

ARGUMENT

I. THE COURT SHOULD ORDER THE PARTIES TO USE NON-PREJUDICIAL AND NON-ARGUMENTATIVE DESCRIPTIONS

Under Federal Rule of Evidence 403, the Court may exclude relevant evidence “if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. “Unfair prejudice” exists when evidence has the potential to cause the jury to render a decision on the basis of facts unrelated to the issues before it, *United States v. Simpson*, 910 F.2d 154, 158 (4th Cir. 1990), or when it might cause the jury to decide an issue based on an improper basis, commonly but not always an emotional one. *United States v. Blackwood*, 913 F.2d 139, 144 (4th Cir. 1990); *Sines v. Kessler*, No. 3:17-cv-00072, 2021 U.S. Dist. LEXIS 72553, at *18 (W.D. Va. Apr. 15, 2021).

Defendant Cantwell’s descriptions of exhibits in the file name such as those identified in his exhibit list and those previously provided to Plaintiffs run afoul of Rule 403. File names such as “Exhibit4-CantwellDefends,” “Exhibit9-DontKill,” “Exhibit13-GorcenskiDangerousAntifa,” and “Exhibit125-MoersTakesCamera” are inappropriately argumentative. Further, such filenames may cause the jury to reach a decision based on Defendant Cantwell’s interpretation of the documents instead of the jury’s own interpretation of the exhibits. Because the jury will be able to see the descriptions of the exhibits provided to the Court by the parties, Plaintiffs respectfully request that the Court order the parties to use non-prejudicial and non-argumentative file name

descriptions (e.g. “Photo of August 12, 2017,” “Video of August 11, 2017,” “Text Message from John Doe to Jane Doe”)¹ when uploading exhibits to Box.com for viewing by the jury.

II. THE COURT SHOULD ALLOW THE PARTIES TO UPLOAD FILES EXCEEDING FILE SIZE OF 50 MB

Plaintiffs’ exhibit list includes lengthy videos and voluminous documents. Some of these files exceed 50 megabytes. To comply with the Court’s October 13, 2021 Order, Plaintiffs request that the Court allow Plaintiffs to upload documents larger than 50 megabytes to Box.com. If there are technological reasons preventing the uploading of documents larger than 50 megabytes to Box.com, Plaintiffs request that the Court allow Plaintiffs to submit all such documents via a USB drive or other media.

CONCLUSION

For these reasons, the Court should grant Plaintiffs’ Motion and preclude the use of argumentative and prejudicial descriptions in the file name for exhibits uploaded to Box.com and allow Plaintiffs to upload files exceeding the file size of 50 megabytes.

Dated: October 17, 2021

Respectfully submitted,

/s/ Jessica Phillips

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¹ Plaintiffs represent that they will use a similar nomenclature.

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2021, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

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